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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/600,223

Applicant(s)

HERLE, SUDHINDRA P.

Examiner

Satish S. Rampuria

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Response to Amendment

1. This action is in response to the Pre appeal brief filed on 07/23/2007.
2. Claims 1-24 are pending.
3. In view of the Pre appeal brief filed on 07/23/2007, PROSECUTION IS HEREBY REOPENED. New ground of rejection set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37

CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37

CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below.

Response to Arguments

4. Appellant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Specification

5. The disclosure is objected to because of the following informalities:

The word "PCU" should have been CPU on page 4, line 9.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-24 rejected under 35 U.S.C. 103(a) as being unpatentable over US Publication No. 2004/0068721 to O'Neill et al. (hereinafter, O'Neill) in view of US Publication No. 2005/0204353 to Ji (hereinafter, Ji).

Per claim 1:

O'Neill discloses:

- A wireless communication device capable of accessing a wireless network and downloading a software upgrade file therefrom (paragraph [0011] “provide software updates to one or more wireless communication devices”), said wireless communication device comprising:
 - a first central processing unit (CPU) capable of controlling wireless communications with said wireless network (paragraph [0014] “...distribution environment provides a suitable distribution node... communication device”);
 - a first memory associated with said first CPU (paragraph [0032] “...non-volatile memory... and a volatile memory” Also See Fig. 2 and related discussion).

O'Neill does not explicitly disclose a second central processing unit (CPU) capable of executing at least one end-user application on said wireless communication device; and a second memory associated with said second CPU, wherein said first CPU downloads said software upgrade file from said wireless network and stores said downloaded software upgrade file in said second memory.

However, Ji discloses in an analogous computer system a second central processing unit (CPU) (paragraph [0018] “...one or more second computer systems...including client devices or computers”) capable of executing at least one end-user application on said wireless communication device (paragraph [0020] “the processor (executes the file)...provide file updating functions under program control”); and a second memory associated with said second CPU (paragraph [0020] “...client device...includes processor...a device memory... upgrade client...program control”),

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wherein said first CPU downloads said software upgrade file from said wireless network and stores said downloaded software upgrade file in said second memory (paragraph [0025] "...host system...including...one processor... receive and process the new file... to generate upgrade information for use in... client devices").

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the method of a second central processing unit (CPU) capable of executing at least one end-user application on said wireless communication device; and a second memory associated with said second CPU, wherein said first CPU downloads said software upgrade file from said wireless network and stores said downloaded software upgrade file in said second memory as taught by Ji into the method of Network for updating firmware and / or software in wireless communication devices as taught by O'Neill . The modification would be obvious because of one of ordinary skill in the art would be motivated to have a second central processing unit (CPU) capable of executing at least one end-user application on said wireless communication device; and a second memory associated with said second CPU, wherein said first CPU downloads said software upgrade file from said wireless network and stores said downloaded software upgrade file in said second memory to provide a self upgrade of upgrade application hosted on wireless devices as suggested by Ji (paragraph [0007]).

Per claim 2:

The rejection of claim 1 is incorporated and further, O'Neill discloses:

- wherein said first CPU is capable of executing a first upgrade agent program that replaces first existing code associated with a first existing software file in said first memory with first replacement code from said downloaded software upgrade file (paragraph [0032] “download agent...download...software from distribution...upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update...”).

Per claim 3:

The rejection of claim 2 is incorporated and further, O'Neill discloses:

- wherein said first upgrade agent program is stored in said first memory ((paragraph [0032] “download agent...download...software from distribution...upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update...” Also See Fig. 2, element 221 and related discussion).

Per claim 4:

The rejection of claim 3 is incorporated and further, O'Neill discloses:

- wherein said downloaded software upgrade file is transferred from said second memory to said first memory by an interprocessor communication unit (paragraph [0032] “download agent...download...software from distribution...upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update...” Also See Fig. 2, element 223).

Per claim 5:

The rejection of claim 4 is incorporated and further, O'Neill discloses:

- wherein said first CPU executes said first upgrade agent program after said downloaded software upgrade file is transferred into said first memory from said second memory (paragraph [0032] "download agent...download...software from distribution... upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update...").

Per claim 6:

The rejection of claim 3 is incorporated and further, O'Neill discloses:

- wherein said first upgrade agent program is transferred from said second memory and stored in said first memory (paragraph [0032] "download agent...download...software from distribution... upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update..." Also See Fig. 2, element 223).

Per claim 7:

The rejection of claim 6 is incorporated and further, O'Neill discloses:

- wherein said downloaded software upgrade file and said first upgrade agent program are transferred from said second memory to said first memory by an interprocessor communication unit (paragraph [0032] "download

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agent...download...software from distribution... upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update..." Also See Fig. 2, element 223).

Per claim 8:

The rejection of claim 7 is incorporated and further, O'Neill discloses:

- wherein said first CPU executes said first upgrade agent program after said downloaded software upgrade file is transferred into said first memory from said second memory (paragraph [0037] "software updates may be downloaded and easily executed using one or more update, download, and upload agents of the primary update environment in conjunction with one or more software applications, components, and/or firmware resident in memory of the wireless communication device").

Per claim 9:

The rejection of claim 2 is incorporated and further, O'Neill discloses:

- wherein said second CPU is capable of executing a second upgrade agent program that replaces second existing code associated with a second existing software file in said second memory with second replacement code from said downloaded software upgrade file (paragraph [0037] "software updates may be downloaded and easily executed using one or more update, download, and upload agents of the primary update environment in conjunction with one or more

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software applications, components, and/or firmware resident in memory of the wireless communication device”).

Per claim 10:

The rejection of claim 9 is incorporated and further, O'Neill discloses:

- wherein said second upgrade agent program is stored in said second memory (paragraph [0032] “download agent...download...software from distribution... upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update...” Also See Fig. 2, element 221 and related discussion).

Per claim 11:

The rejection of claim 10 is incorporated and further, O'Neill discloses:

- wherein said second upgrade agent program is transferred from said first memory and stored in said second memory (paragraph [0032] “download agent...download...software from distribution... upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update...”).

Per claim 12:

The rejection of claim 11 is incorporated and further, O'Neill discloses:

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- wherein said second CPU executes said second upgrade agent program after said second upgrade agent program is transferred into said second memory from said first memory (paragraph [0037] "software updates may be downloaded and easily executed using one or more update, download, and upload agents of the primary update environment in conjunction with one or more software applications, components, and/or firmware resident in memory of the wireless communication device").

Claims 13-24 are the method claim corresponding to apparatus/device claims 1-12 respectively, and rejected under the same rational set forth in connection with the rejection of claims 1-12 respectively, as noted above.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Satish S. Rampuria** whose telephone number is **(571) 272-3732**. The examiner can normally be reached on **8:30 am to 5:00 pm** Monday to Friday except every other Friday and federal holidays. Any inquiry of a general nature or relating to the status of this application should be directed to the **TC 2100 Group receptionist: 571-272-2100**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wei Y. Zhen** can be reached on **(571) 272-3708**. The fax

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phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Satish S. Rampuria
Patent Examiner/Software Engineer
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WEI ZHEN
SUPERVISORY PATENT EXAMINEE